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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAMI L. BECHYNE and JAMES D. MCMANUS

Appeal 2008-1889¹
Application 10/761,042
Technology Center 3700

Decided: August 27, 2008

Before, TONI R. SCHEINER, DEMETRA J. MILLS, and JEFFREY N. FREDMAN, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

The following claim is representative.

1. A package of interlabial pads for carrying a supply of the pads in hygienic condition in such manner as to maintain them in hygienic condition

¹ This application has similar parentage to Appeal No. 2006-1928, Serial No. 10/760,877.

and to be readily available for use in hygienic condition when needed, said package comprising a receptacle, a supply of pads in the receptacle, said receptacle having an opening through which a pad may be withdrawn for use when needed, said receptacle having a reclosable closure for closing the opening, said closure being closed for carrying the pads in hygienic condition and for continued carrying in hygienic condition of the pads remaining in the receptacle after withdrawal of a pad, said receptacle comprising a bag having front and back walls joined at the sides and bottom with said opening at the top, said closure comprising press-fit members extending across the walls adjacent the opening.

Cited References

Jones	US 6,059,100	May 9, 2000
Burrow	US 6,115,997	Sep. 12, 2000

Grounds of Rejection

1. Claims 1-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Burrow.

DISCUSSION

“[T]he invention comprises a package of interlabial pads for carrying a supply of the pads in hygienic condition in such manner as to maintain them in hygienic condition and to be readily available for use in hygienic condition when needed.” (Spec ¶ 5.)

The Examiner finds that:

A feminine hygiene disposal package 10 is disclosed for carrying pads comprising a receptacle 12 having an interior 14

in which a plurality of disposable containers 20 are located. The difference between the claimed subject matter and Jones resides in package 10 carrying a supply of pads in the receptacle.

(Ans. 4.)

The Examiner relies on Burrow for the fact that

it is well known to those skilled in this art to supply disposable feminine hygiene pads in a container that not only serves to carrying a new pad but also serves to hold the used pad, see col. 1, lines 23-30.

(Ans. 5.)

The Examiner concludes:

It would have been obvious to one of ordinary skill in the art to modify the system of Jones by incorporating a supply of pads in the containers in view of the teaching of Barrow et al, in order to obviated [sic] the need to have a separate individual packages, provide the pads associated together in a single receptacle and economize material by using the same container twice.

(Ans. 5.)

To the extent that Jones does not employ such a press-fit closure, the Examiner states:

Official Notice is taken for the use of press fit members as a notoriously old and well known means for closing a bag. It would have been obvious to one of ordinary skill in the art to employ press fit members in view of Official Notice, order to provide a convenient means for closing the bag.

(Ans. 5.)

Appellants, on the other hand, contend that:

Jones certainly lacks any disclosure or suggestion for a package that has a supply of interlabial pads in a receptacle in hygienic condition. Rather, Jones merely discloses a main container (12) of "disposal bags". There are no interlabial pads in the container (12), either before or after any one of the disposal bags (i.e., containers (20)) are used. In Jones, a single, disposable bag can be removed from the container and a single, used feminine product can be placed into the single disposable bag. There is no teaching or suggestion by Jones that the used pads are then placed into the main container (12), nor would there appear to be any room in the main container for the used pads. Accordingly, Jones fails to disclose a supply of pads in a receptacle in a hygienic condition as recited in claim 1.

(Br. 5-6.)

Appellants further contend that:

Nowhere do Burrow et al. teach or suggest storing a plurality of unused pads (or used pads for that matter) in a single package in a hygienic condition. Thus, Burrow et al. (like Jones) also fails to disclose a supply of pads in a receptacle as recited in claim 1.

(*Id.* at 6.) Moreover, Appellants argue that "it would not have been obvious to one of ordinary skill in the art to modify the system of Jones in view of the teaching of Burrow et al. as asserted in the final Office action, i.e., to provide a supply of interlabial pads in the main container (12) of Jones in a hygienic condition." (Br. 7.)

Appellants' arguments are not persuasive. We note that a decision affirming the Examiner was rendered in Appeal No. 2006-1928 (Application No. 10/760,877), an appeal which dealt with the relevance of the same prior

art, Jones and Burrow, to claims that differed from the present claims only in the specific type of closure required (a difference not addressed by Appellants, and so not at issue here).

The prior merits panel considered the same arguments as herein presented, including the argument regarding the whether the prior art discloses a package comprising a receptacle and a supply of pads in the receptacle in a hygienic condition (Decision 5), and found that “one of ordinary skill in the art at the time the invention was made was familiar with individually wrapping feminine hygiene products to maintain the articles in hygienic condition, and that it was well known to reuse the wrapping for the disposal of used articles. (See Burrow, col. 1, lines 23-30.)” (Decision 6-7.) Thus the prior merits panel held that the prior art disclosed wrapping feminine hygiene products to maintain the articles in hygienic condition, and we are not persuaded by Appellants’ argument.

The prior merits panel also found that:

[B]oth Jones and Burrow are in the same field of feminine hygiene product packaging as the claimed invention and are directed to the same problem of resealable hygienic packaging as the claimed invention. As discussed ... we find that Jones discloses a receptacle similar in structure to the claimed receptacle and housing multiple disposal containers for used pads, Burrow teaches that it was common to package pads in the same packaging that was later used to dispose of the pads... Based on these findings, we hold that the teaching in Burrow of using disposal containers for both storing new pads and disposing of used pads would have provided a clear suggestion to one skilled in the art at the time the invention was made to use the disposal containers (20) of Jones for storing new pads, to obviate the need to have separate containers for new and

used pads and to economize material by using the same container twice. As such, one of ordinary skill in the art at the time of the invention, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims.

(Decision 11-12.)

Thus we are not persuaded by Appellants' argument that it would not have been obvious to modify the system of Jones in view of the teachings of Burrow. (Br. 7.) Since the decision of the prior merits panel, the Supreme Court has clarified obviousness case law in *KSR*, noting "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007). We agree with the prior merits panel that the ordinary artisan would recognize how to combine the packaging of Burrows with the disposal device of Jones and would appreciate the desirability of the combination.

A copy of the decision in Appeal No. 2006-1928 (Application No. 10/760,877) is attached to this decision. Each of Appellants' arguments regarding the issue of whether the prior art teaches maintaining the pads in hygienic condition was addressed in the prior decision. (Ans. 6-7.)

SUMMARY

In view of the above, the obviousness rejection is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

clj

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